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No. 1323

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In the Supreme Court of the United States

OCTOBER TERM, 1969

GARDEN STATE TRANSIT CO., INC., APPELLANT

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

MOTION TO AFFIRM

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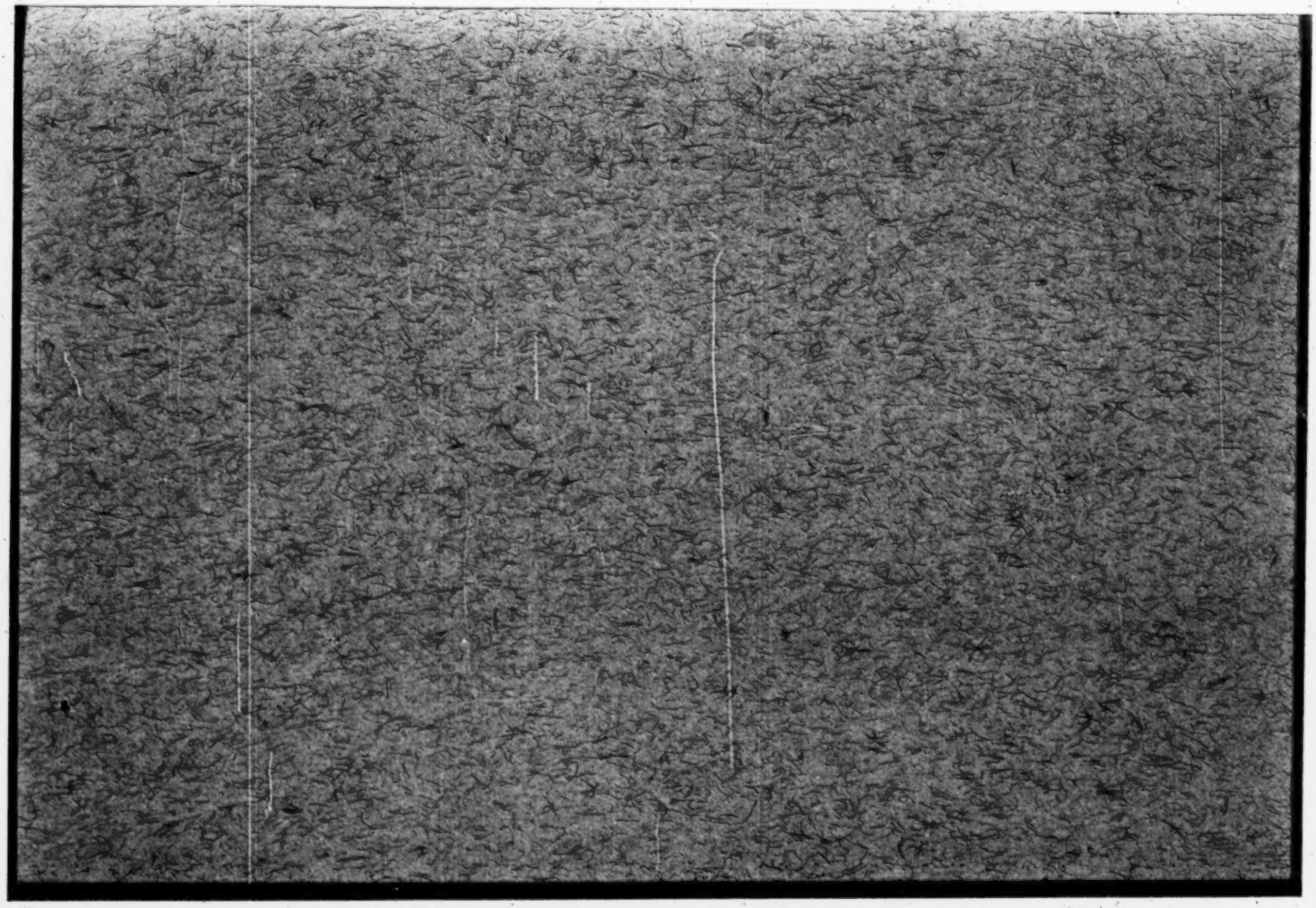

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Pursuant to Rule 16(1)(c) of the Rules of this Court, the United States and the Interstate Commerce Commission move that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from the final judgment of a three-judge district court (J.S. App. B, 3a-4a) dismissing an action brought to set aside the report and

order of the Interstate Commerce Commission (J.S. App. C, 5a-15a) which denied appellant's application for a motor common carrier certificate pursuant to Section 207 of the Interstate Commerce Act (49 U.S.C. 307).

In 1966 appellant applied to the Commission for authority to transport passengers by bus between New York City and Saddle Brook, New Jersey, a suburban locality with a population of about 18,000 (J.S. App. C, 8a). The transit time involved is about 20 or 30 minutes, depending upon the route taken (J.S. App. C, 8a). Two carriers presently provide bus service between Saddle Brook and New York City (*ibid.*). Both opposed appellant's application, and both filed applications for enlarged authority in the event that the Commission found a need for additional service (J.S. App. C, 6a, 8a, 10a).

The three applications were considered in a consolidated hearing before the Commission's joint board (see 49 U.S.C. 305), which recommended that appellant's application be denied and that the application of one of the other two carriers be granted (J.S. App. E, 26a-28a). Upon review, Division 1 of the Commission denied all three applications, finding no public need for the proposed service. It noted that the witnesses supporting the applications relied upon their desire for service at points no more than five or six blocks from existing bus routes (J.S. App. C, 10a). Noting further that Saddle Brook is "a relatively compact area," the Division found that "the small measure of additional convenience that might

accrue to some persons if a bus route should be located five blocks nearer to their individual points of interest does not persuade us that any real inadequacies exist in the services that are presently available" (J.S. App. C, 11a).

In describing appellant in its report, Division 1 pointed out that its current operations were mostly in charter service and that, if its application were granted, appellant would receive the incidental authority to provide charter service originating in New York City as well as in Saddle Brook (J.S. App. C, 9a).[1]

The three-judge district court below unanimously affirmed, holding that the Commission's decision was rational and supported by substantial evidence (J.S. App. B, 3a-4a).

ARGUMENT

The decision of the court below is correct, and the instant appeal presents no substantial question warranting plenary review. It has long been established that the Commission has broad discretion in determining what the public convenience and necessity require. See, *e.g.*, *Interstate Commerce Commission* v. *Parker*, 326 U.S. 60, 65; *United States* v. *Detroit Navigation Co.*, 326 U.S. 236, 241. Here the Commission denied appellant's application upon determining that the "small measure of additional conveni-

[1] Appellant would have obtained the incidental charter authority because its application was filed before January 1, 1967 (see 49 U.S.C. 308(c)).

ence," which the proposed service would provide by having a route a few blocks nearer the supporting witnesses' "individual points of interest," does not justify a finding that the existing service is inadequate to meet the public convenience and necessity. That determination is, we submit, well within the Commission's range of discretion.

Consideration of the incidental charter authority which appellant would have obtained had its application been granted could not have been, as appellant asserts (see J.S. 4, 15-16), a crucial factor in the Commission's decision since its determination was expressly based upon the adequacy of the existing service between New York City and Saddle Brook. In this connection, it should be noted that the Commission denied all three of the applications, and thus granted no additional authority at all. Finally, since the Commission was warranted in finding the existing service to be adequate, this appeal does not present the question which appellant seeks to raise (see J.S. 3, 7-9) concerning the relevance of the National Transportation Policy.[2]

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[2] Although appellant also contends (J.S. 10) the Commission was obliged to explain in detail why it denied appellant's petition for reconsideration (J.S. App. D, 16a-17a), it is well settled that the agency need not elaborate its reasons for denying such a petition. See, *e.g.*, *Carolina Scenic Coach Lines* v. *United States*, 59 F. Supp. 336, 337-38 (W.D. N.C.), 326 U.S. 680; *Allen* v. *United States*, 187 F. Supp. 625, 630 (S.D. Fla.).

CONCLUSION

For the reasons stated, the judgment of the district court should be affirmed.

Respectfully submitted.

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